

No. PD-0593-20

IN THE TEXAS COURT OF CRIMINAL APPEALS

FILED
COURT OF CRIMINAL APPEALS
12/4/2020
DEANA WILLIAMSON, CLERK

JOSE SANCHEZ,
Appellant

v.

THE STATE OF TEXAS,
Appellee

On Appeal From:

Eleventh Court of Appeals, Eastland, Texas
No. 11-17-00254-CR

and

358th Judicial District Court of Ector County, Texas
Trial Court Cause No. D-16-1836-CR

APPELLANT'S BRIEF ON THE MERITS

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IDENTITY OF PARTIES AND COUNSEL

Under Rule 38.1(a), Texas Rules of Appellate Procedure, the following is a complete list of the names and addresses of all parties to the trial court's final judgment, and their counsel in the trial court, as well as appellate counsel, so that the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision and so the Clerk of the Court may properly notify the parties or their counsel of the final judgment and all orders of the Texas Court of Criminal Appeals.

1. **Trial Court:** Honorable W. Stacy Trotter, 358th Judicial District Court of Ector County, Texas.
2. **Trial Counsel for the State of Texas:** William Prasher and Julie Prentice, Assistant District Attorneys, Ector County District Attorney's Office, 300 N. Grant Ave., Rm. 305, Odessa, Texas 79761.
3. **Trial Counsel for Appellant:** Tony Chavez and Adrian Chavez, Chavez Law Firm, 121 East 4th Street, Odessa, Texas 79761.
4. **Appellate Counsel for the State of Texas:** Michael Bloch, Assistant District Attorney, 300 N. Grant Ave Ste 305, Ector County Courthouse, Odessa, TX 79761-5158.
5. **Appellate Counsel for Mr. Sanchez (former):** M. Michele Greene, 2833 Wildwood Ave Odessa, TX 79761-3421.

6. **Appellate Counsel for Mr. Sanchez (current):** Aaron Spolin, Texas Bar No. 24118984, Spolin Law P.C., 7600 Chevy Chase Drive, Suite 300, Austin, TX 78752, Telephone: 866-716-2805.

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TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

INTO COURT COMES, JOSE SANCHEZ, the appellant, who files this brief, pursuant to Rule 70.1 of the Texas Rules of Appellate Procedure, through the attorney designated herein and in support of said brief would respectfully show the Court as follows:

STATEMENT OF THE CASE

Appellant was indicted on November 22, 2016, in the 358th Judicial District Court of Ector County, on one count of continuous sexual abuse of a young child – a first degree felony – in violation of Tex. Penal Code Ann. §§ 21.02, 21.02(h). (CR 1:7). Following a bench trial Appellant was ultimately found guilty of continuous sexual abuse of a young child. (CR 1:71-72; RR 5:119)

The Honorable W. Stacy Trotter sentenced Appellant to life in the Institutional Division of the Texas Department of Criminal Justice, as well as a \$5,000 fine. Appellant was also ordered to pay \$824.00 in court costs pursuant to Tex. Penal Code Ann. §§ 12.32(a-b), 21.02(h) (CR 1:71-72; RR 6:8).

On May 29, 2020, the Eleventh Court of Appeals, Eastland (panel consisting of: Bailey, C.J., Stretcher, J., and Wright, S.C.J. Willson, J., not participating), denied Appellant's appeal. *Sanchez v. State*, No. 11-17-00254-CR, 2020 Tex. App. LEXIS 4165 (Tex. App. May 29, 2020). Appellant filed a Petition for Discretionary Review with this Honorable Court.

On October 21, 2020, the Petition for Discretionary Review was granted with respect to ground number two – whether the trial court abused its discretion in refusing to allow Appellant to withdraw his jury trial waiver?

STATEMENT REGARDING ORAL ARGUMENT

The Court of Criminal Appeals did not permit any oral argument in its grant for discretionary review. Appellant does not request the opportunity to present oral arguments.

ISSUE PRESENTED

1. Whether the trial court abused its discretion in refusing to allow Appellant to withdraw his jury trial waiver?

STATEMENT OF FACTS

The morning of June 29, 2017, Appellant executed a Waiver of Right to a Jury Trial which he sought to withdraw that very same day. (2SCR 1:10-11; RR 4:4). The defense initially asserted that Appellant executed the waiver and requested to withdraw the waiver within the same hour. (RR 5:20, 21). During the bench trial, Adrian Chavez, a different attorney defending Appellant, asserted that there was a two-hour delay between the execution and the attempt to withdraw. (RR 5:24). The trial court stated there were “several hours” that passed between the time Appellant executed the waiver and his request to withdraw the waiver. (RR 5:29). At most,

“several hours” passed, and it is uncontroverted that the execution of the waiver and the request to withdraw were on the very same day. Despite this, the trial court refused Appellant’s request. (RR 5:28-30).

On August 2, 2017, Appellant sought to set this case back on the jury docket. (CR 1:65-67). On August 7, 2017, a bench trial was scheduled to commence. (RR 5:1; 6:1). Prior to the start of trial, Appellant again sought to withdraw his jury trial waiver. (RR 5:8). The trial court again refused Appellant’s request. (5:10, 11).

Following a bench trial Appellant was ultimately found guilty of continuous sexual abuse of a young child. (CR 1:71-72; RR 5:119)

Appellant was sentenced to life in the Institutional Division of the Texas Department of Criminal Justice, as well as a \$5,000 fine, and he was ordered to pay \$824.00 in court costs (CR 1:71-72; RR 6:6).

SUMMARY OF THE ARGUMENT

On June 29, 2017, Appellant executed a Waiver of Right to a Jury Trial. At most mere hours later, and on the very same day, Appellant sought to withdraw his waiver. At no point prior to the bench trial did the Court actually consider whether Appellant was entitled to withdraw the waiver. Instead, and only after both the State and Appellant had rested and closed, the trial court decided to “revisit” the jury trial waiver withdrawal request and made a determination that Appellant was not entitled to withdraw his waiver. The trial court’s ruling was in error, and Appellant should

have been permitted to withdraw his waiver given the marked “absence of adverse consequences.” In turn, the Court of Appeal erred in upholding the conviction.

ARGUMENT

The facts and the law in this matter are uncontroverted. Both the trial court and the Court of Appeals decisions run counter to well-established precedent from this Honorable Court, both the United States and Texas Constitutions, and the Code of Criminal Procedure. A defendant in a criminal case has the absolute and unfettered right to a jury trial. U.S. Const. Amend. VI; Tex. Const. Art. 1, § 15; Tex. Crim. Proc. Code Ann. Art. 1.12; see *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397 206 L. Ed. 2d 583 (2020); *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017) (“The right to a jury trial in criminal cases was part of the Constitution as first drawn, and it was restated in the Sixth Amendment. Art. III, § 2, cl. 3; Amdt. 6. By operation of the Fourteenth Amendment, it is applicable to the States”).

A jury trial waiver can only be relinquished by a defendant following an express waiver which requires an intentional abandonment or relinquishment of the right to a jury trial. Tex. Crim. Proc. Code Ann. Art. 1.13; *Simpson v. State*, 591 S.W.3d 571, 576 (Tex. Crim. App. 2020); *Meek v. State*, 851 S.W.2d 868, 870 (Tex. Crim. App. 1993); *Talbert v. State*, 529 S.W.3d 212, 214 (Tex. App. Houston 14th Dist. 2017), petition for discretionary review refused, (Dec. 13, 2017); *Davidson v. State*, 225 S.W.3d 807, 811 (Tex. App. Fort Worth 2007). The right to a jury trial is

of such paramount importance that the denial of this right is considered a structural constitutional error. *Davidson v. State*, 225 S.W.3d 807, 811 (Tex. App. Fort Worth 2007).

A defendant does not have the unfettered ability to withdraw a jury trial waiver and to demand a jury trial. A defendant may only withdraw the jury trial waiver upon showing an “absence of adverse consequences” from the withdrawal. *Hobbs v. State*, 298 S.W.3d 193, 197 (Tex. Crim. App. 2009); *Talbert v. State*, 529 S.W.3d 212, 214 (Tex. App. Houston 14th Dist. 2017), petition for discretionary review refused, (Dec. 13, 2017).

In the instant case, Appellant sought to withdraw his waiver on the same day it was executed. Despite the clear “absence of adverse consequences,” the trial court refused to permit the withdrawal. What is remarkable in the instant case is that Appellant first sought to withdraw his waiver at most hours after it was executed on June 29, 2017. Even viewing the facts in the light most favorable to the prosecution, Appellant entered into the waiver in the morning, and that same afternoon, he sought to withdraw his waiver. (RR 4:4,8). This point is uncontroverted. Despite this, and despite the absence of adverse consequences, the trial court refused and set a bench trial for July 11, 2017.

On June 30, 2017, the very next day, the State moved to amend the indictment. (CR 1:54-55). On July 10, 2017, the State once again moved to amend the

indictment. (CR 1:58-59). Neither of these amendments – each of which were solely at the State’s request – were actually necessary, as the State conceded during the bench trial. (RR 5:5:17, 26). Following the second amendment to the indictment, Appellant exercised his right to a ten-day notice period. Tex. Code Crim. Proc. Ann. Art. 28.10(a). The bench trial was rescheduled for August 7, 2017. (CR 1:64). On August 2, 2017, Appellant once again moved to withdraw his jury trial waiver. (CR 1:65-67). The trial court acknowledged, and the record establishes, that Appellant twice requested to withdraw his jury trial waiver. (RR 5:113). On the day of the bench trial, the court stated that Appellant could withdraw his waiver subject to the State’s consent. The State refused. (RR 5:9). The Court reviewed the waiver and made a determination that it was validly executed. (RR 5:10-12, 29). At no point prior to the bench trial did the Court actually consider whether Appellant was entitled to withdraw the waiver. Instead, and only after both the State and Appellant had rested and closed, the trial court decided to “revisit” the jury trial waiver withdrawal request and made a determination that Appellant was not entitled to withdraw his jury trial waiver. (RR 5:112).

The trial court’s ruling was in error, notwithstanding the fact that it was affirmed by the Court of Appeals. Simply stated, there was absolutely no reason not to permit Appellant to withdraw his waiver mere hours after it was executed. Again, Appellant initially sought to withdraw his waiver at most hours (and certainly on the

very same day) it was executed. (RR 4:4,8). In these circumstances, the withdrawal would not have interfered with the orderly administration of the business of the course; no witnesses would have been inconvenienced; there would have been no unnecessary delay; and there was absolutely no prejudice (or conceivable prejudice) to the State. In fact, the bench trial was held a mere eight months from the time Appellant was initially indicted. Appellant's initial request to withdraw the waiver (the same afternoon it was executed) was thirty-nine days prior to the bench trial. *In re Tennison*, 502 S.W.3d 821, 822 (Tex. Crim. App. 2016), the Court held that a jury trial waiver that was requested thirty-six days prior to a scheduled bench trial was made sufficiently in advance of trial. Of course, and again, it bears repeating, that Appellant sought to withdraw his waiver (at most) mere hours after it was executed. Appellant should have absolutely been permitted to withdraw his waiver and the trial court, and in turn the Court of Appeals, erred in this regard.

PRAYER

WHEREFORE, pursuant to the foregoing, Appellant prays this court exercise its supervisory authority and reverse the decision of the Court of Appeals in accordance with well settled law.

Respectfully submitted,

/s/ Aaron Spolin

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 4th day of December, 2020, the Appellant's Brief on the Merits was served via certified electronic service provider to:

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/s/ Aaron Spolin

Aaron Spolin

CERTIFICATE OF WORD COUNT

Counsel for the Appellant certifies that in accordance with Rule 9.4 of the Texas Rules of Appellate Procedure the word count of this brief is 2296 words and within the allowable word limit.

/s/ Aaron Spolin

Aaron Spolin

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